IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 216 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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ISHWARBHAI KASHABHAI BHOI

Versus

STATE OF GUJARAT

Appearance:

MR BB NAIK for Petitioner No. 1-3

MR DP JOSHI, PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 06/07/2001

ORAL JUDGEMENT

#. Shri BB Naik, learned counsel for the revisionist and Shri DP Joshi, learned APP have been heard on admission of this revision.

#. Since a very short question is involved in this revision, it can be finally disposed of at the admission

stage.

#. The brief facts giving rise to this revision are that the revisionist was facing a trial under secs.302, 504 and 114 of the Indian Penal Code. One of the dates for recording prosecution evidence was 20th March, 2001. Shri BJ Bharwad was appearing for the accused-revisionist. He was operated and as such, he sought adjournment. Adjournment was granted on 20th March, 2001 and 9th April, 2001 was fixed for examination of prosecution witnesses. The prosecution witnesses were present on 9th April, 2001. On that day, retirement pursis was given by Shri Bharwad. Shri BB Naik, learned counsel for the revisionist informs that, because of post-operational complication Shri Bharwad had to retire. Thereafter, the revisionist sought adjournment to engage another counsel, which was rejected by the Additional Sessions Judge. On the next day, the revisionist engaged another counsel Shri LN Bihola. Since, he was engaged on that very day, he applied for adjournment, which was refused. Statements of the witnesses who were present on 9-4-2001 were recorded by the Additional Sessions Judge. Evidence of the doctor was also recorded. Application for adjournment given on 10-4-2001 was rejected on the ground that, if the accused revisionist wanted to cross-examine the doctor, he may approach the High Court. This approach of the Additional Sessions Judge was highly unwarranted. It was not a case where intentional or deliberate adjournment was sought from the side of the revisionist. Adjournments were necessitated because of operation done on Shri BJ Bharwad and also because Shri Bihola, who was subsequently engaged because of post operational complications of Shri Bharwad that he had to apply for adjournment. The interest of justice required that one adjournment should have been granted by the Additional Sessions Judge. The Additional Sessions Judge lost sight of the fact that, if the witnesses were not cross examined, the evidentiary value of their examination-in-chief would be nil. It was not a case where frequent adjournments were sought by the revisionist in order to delay the disposal of the trial.

#. Shri Joshi, however, requested that adequate cost may be awarded. I am, however, not inclined to award cost because it was not intentional adjournment sought by the accused, revisionist. However, the Additional Sessions Judge shall recall the doctor for cross-examination and the expenses of the doctor shall be borne by the accused, revisionist.

#. With the above observations, the revision is allowed.

The impugned order dated 5-5-2001 on application ex.15 is set aside. The Additional Sessions Judge, Camp at Modasa is directed to recall the prosecution witnesses and the doctor for cross examination at the expense of the accused, revisionist and shall proceed to record their cross examination in accordance with law. No further adjournment for cross examination of prosecution witnesses shall be allowed to the revisionist.

July 6, 2001. (D.C. Srivastava, J.)

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